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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HERNANDEZ, MICHAEL

ART UNIT

PAPER NUMBER

3612

MAIL DATE

DELIVERY MODE

03/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,079	Applicant(s) LIEDMEYER ET AL.	
	Examiner MIKE HERNANDEZ	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/24/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 1 through 14 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites, “on the one hand” and “on the other hand”. This terminology is ambiguous and unnecessary and it is suggested that these terms be deleted from the claim. Additionally, the claim uses the term ‘its’ on the 2nd and 5th to last lines. It is assumed that ‘its’ refers to the tension bow, however it is suggested that ‘its’ be changed to clearly identify the tension bow.

Claim 2 recites, “the movement” in the second line. It is unclear which movement is being referenced.

Claim 3 uses the term ‘its’ similarly to claim 1 and should be changed.

Claim 8 recites, “the two parts”. There is insufficient antecedent basis for this limitation.

Claim 13 recites, “one or more supports” midway through the claim. This is an alternative structure limitation and it is suggested the claim be changed to “at least one support”.

Claim 14 does not limit the roof of claim 1.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1, 2, 4 through 8, and 14 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 6,347,827 to Maass.

Regarding claims 1 and 14, Maass discloses a convertible vehicle with a roof that has a flexible roof covering at least in its rear area, wherein, in the closed state, the roof covering can be held under tension relative to the automobile body by at least one tension bow (15), and wherein, to open the roof, the tension bow can first be displaced upward from a closed position (Fig 2) in which it lies on a closed supporting structure (16) of the automobile body, then rotated back (Fig 10) with the supporting structure open, and then displaced downward (Fig 13) into an open position located below the level of the closed supporting structure wherein for the upward movement and return movement of the tension bow, a first center of motion (23) is provided, and for the tension bow's downward displacement, a second center of motion (the point at which link 19 connects to the bearing 17 on the vehicle body) that is separate from the first center of motion is provided, and during the downward displacement of the tension bow about the second center of motion, the tension bow's motion about the first center of motion is stopped. Note: the fins (15) of Maass are considered a tension bow and would be an obvious expedient to replace with a U-shaped tension hoop. Further, the return

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movement does not specify that the tension bow returns to its original position (Fig 10 shows the bow slightly lower than in Fig 2). Additionally, the pivot point (23) is considered a first center of motion. When the bow (15) is rotated, it is moved *about that point*. When the tension bow is moved about the second center of motion (on the bearing 17) the bow remains substantially horizontal and *does not move relative to the first center of motion*. The examiner suggests amending the claim such that the first center of motion is defined as a pivot connection and the limitations include the tension bow's motion about the pivot connection is stopped. The examiner believes that this would be sufficient to overcome the prior art of record.

As to claim 2, Maass discloses (Col 4 Ln 5-8) the first center of motion is stopped by mechanical means.

As to claim 4, Maass shows (Fig 1-10) during the movement about the first center of motion, the movement about the second center of motion is stopped.

As to claim 5, Maass discloses the first center of motion is a pivot axis.

As to claim 6, Maass shows the downward displacement is produced by a four bar linkage.

As to claim 7, Maass shows (Fig 3) the four-bar linkage includes two body mounted joints (two pivot points connected to the main bearing 17) one of which (19) supports a lateral post section of the roof, while the other rotatably supports a short coupling link (vertical link just left of the bearing 17).

As to claim 8, Maass shows the coupling link and the roof post are connected with each other by a control link (horizontal link connecting the lower portion of 19 with the vertical link) located between them and connected to the two parts by joints.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claim 13 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Maas in view of US Pat No 367,064 to Reuck.

Maas discloses a convertible as applied to claim 1 previously, however fails to disclose lateral arms that support the tension bow in the open position.

Reuck teaches a tension bow (2) that rests on at least one support (9) that is held on lateral arms (shown in Fig 1 connected to the top edge of the body) that is connected to the roof frame that holds the roof covering from below before the roof is installed on the body.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by Maas with tension bow supports in the open position, as taught by Reuck, in order to support the tension bow when the top is open to prevent damage to the roof or trunk area occurring from movement during driving.

Allowable Subject Matter

7. **Claims 3 and 9 through 12 would be allowable** if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: At this instant, the prior art of record fails to show or make obvious: a tension bow resting on a stop *during its entire downward displacement* according to claim 3; the first center of motion supported *on the control link* according to claim 9; nor an arm *assigned to the control link* carrying a stop limiting the movement of the tension bow according to claim 10.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References A, C, and I each disclose a folding top similar to the present applicant and include a stop mechanism. The remaining references also disclose a folding top that has a similar tension bow movement and hinge structure, particularly reference A.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MIKE HERNANDEZ whose telephone number is (571)272-2354. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis H. Pedder/
Primary Examiner, Art Unit 3612

/MIKE HERNANDEZ/
Examiner, Art Unit 3612